

### REMARKS

Claims 1-10 are pending in this application after this amendment. Claims 1, 6, and 7 are independent. New claims 8-10 are submitted for consideration by the Examiner. In light of the amendments and remarks included herein, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections.

By this amendment, Applicant has amended claim 1 to more appropriately recite the present invention. It is respectfully submitted that this amendment is being made without conceding the propriety of the Examiner's rejection, but merely to timely advance prosecution of the present application.

In the outstanding Official Action, the Examiner rejected claims 1, 2, 6, and 7 under 35 U.S.C. §103(a) as being unpatentable over *Moorman* (U.S. Patent No. 5,041,911) in view of *Ueno et al.* (U.S. Patent No. 5,625,415); rejected claim 3 under 35 U.S.C. §103(a) as being unpatentable over *Moorman* in view of *Ueno et al.* and further in view of *Takanashi et al.* (U.S. Patent No. 6,313,923); and rejected claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over *Moorman* in view of *Ueno et al.* and further in view of *Kadowaki* (Japanese Publ. No. 08-202325 A). Applicant respectfully traverses these rejections.

In the outstanding Official Action, the Examiner maintains that the rejection of claim 1 is proper. The Examiner asserts that *Moorman* discloses a user being able to make a determination as to how well an image is exposed and that a user may make adjustments based upon the output of the gradation-divided area. The Examiner further asserts that *Ueno et al.* teaches a user being

able to select an area within an image to perform exposure control. The Examiner concludes that the combination of the teachings renders the claims obvious. Further, the Examiner maintains that the combination of the references is proper by asserting that *Moorman* is not directed toward capturing a final image and thus, the image of *Moorman* may be interpreted as a pre-shot image.

However, in Applicant's Reply filed April 13, 2005, with regard to claim 3, Applicant argued that *Moorman* did not teach or suggest displaying any portion of the image and thus, by combining *Takanashi et al.* with *Moorman*, additional processing would be required, which *Moorman* teaches away from. With regard to this argument, the Examiner fails to address our arguments and merely asserts that *Takanashi* supports the purported combination. Further, the Examiner does not address Applicant's argument that the actual teachings of the references do not support the Examiner's motivation in combining the teachings of the references, namely, to reduce processing load. For at least these reasons, Applicant maintains that claim 3 is patentable over the references as cited and respectfully request the Examiner respond to these arguments.

Further, in Applicant's previous Reply, Applicant argued with regard to claim 4 that *Kadowaki* is insufficient to cure the deficiencies of the teachings of *Moorman* and *Ueno et al.* as *Kadowaki* fails to teach or suggest wherein the luminance range designating device is constructed in such a manner so as to select one color from color samples displayed on a screen of the image display unit. In response, the Examiner states that *Moorman* teaches the ability to select a range of colors for each of the designated luminance ranges and that *Kadowaki* teaches that it is well known in the art to select a color for a certain part of an image from a color pallet. Applicant disagrees with the Examiner's assertions, as there is no teaching or discussion in

*Moorman* that is directed to selecting a range of colors for each of the designated luminance ranges. Further, Applicant maintains that *Kadowaki* fails to teach or suggest using the colors to select an area. For at least these reasons, Applicant maintains that claim 4 is patentable over the references as cited and respectfully requests the Examiner respond to these arguments.

Finally, Applicant maintains that the cited references fail to render claim 1 obvious. The present invention set forth in claim 1 allows for designation of one of the gradations corresponding to the subject in an image that has been divided into gradation areas. *Ueno et al.* clearly teaches that additional processing must take place with the information included in the area indication 700. However, in the case of the present invention, the area has already been divided into gradation areas and one of the gradations is designated in the gradation area divided image.

As such, Applicant maintains that the teachings of *Ueno et al.* are insufficient to cure the deficiencies of the teachings of *Moorman*, assuming these references are combinable, which Applicant does not admit. As the cited references fail to teach or suggest all of the claim elements, Applicant maintains that claim 1 is not obvious over the references as cited.

In addition to the above argument, Applicant maintains that the references are not properly combinable. The disclosure of *Moorman* is directed to an exposure metering system that maps electrical signals into a desired metric for display according to the exposure of individual pixel values of a focused image. In contrast, the disclosure of *Ueno et al.* is directed to a processing apparatus that calculates an exposure value from image data representative of a pre-shot image on the basis of a user selected area. In other words, the user selection of an area as

disclosed in *Ueno et al.* takes place pre-shot and prior to when the mapping of *Moorman* takes place. As such, Applicant maintains that the references are not properly combinable as asserted by the Examiner. Further, Applicant maintains that one of ordinary skill in the art would not be motivated to make the purported combination as asserted by the Examiner based upon the teachings of the references. For all the reasons set forth above, Applicant maintains that claim 1 is patentable over the references as cited.

It is respectfully submitted that claims 2-5 are allowable for the reasons set forth above with regard to claim 1 at least based upon their dependency on claim 1. It is further respectfully submitted that claims 6 and 7 contain elements similar to those discussed above with regard to claim 1 and, thus, these claims, together with claims dependent thereon, are allowable over the references as cited for the reasons set forth above with regard to claim 1.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Dated: October 14, 2005

Respectfully submitted,

By

Marc S. Weiner

Registration No.: 32,181

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Rd

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant